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ABSTRACT

Three major Supreme Court cases concerning Bible reading and prayer in the public schools are discussed. The constitutional bases for the court cases are the First and Fourteenth Amendments. The former expresses that Congress may make no laws to establish or to prohibit the free exercise of religion and the latter provides that no state shall deprive any person of life, liberty, or pursuit of happiness without due process of the law. The three Supreme Court cases occurred in the 1960s. Engel v. Vitale tested the constitutionality of a daily student prayer composed by the New York Board of Regents. The Supreme Court contended that the use of daily prayer in the classroom was totally inconsistent with the Establishment clause of the First Amendment. The Schempp v. the School District of Abington Township questioned the validity of a Pennsylvania law requiring the reading of ten Bible verses without comment at the beginning of each school day. Although student participation was not mandatory, the court declared the practice unconstitutional. The Murray v. Curlett case challenged the opening exercises which consisted of reading the Bible and reciting the Lord's Prayer in the Baltimore schools. The Court ruled in favor of professed atheists Madalyn Murray and her son. Reactions from religious leaders included strong support both for and against the decisions. The conclusion is that although the three cases did not end litigation regarding Bible reading and prayer in the schools, they largely determined the precedent in dealing with similar cases. (Author/KC)

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BIBLE READING AND PRAYER IN THE PUBLIC SCHOOLS: THEIR (IL)LEGAL STATUS

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BIBLE READING AND PRAYER IN THE PUBLIC SCHOOLS:

THEIR (IL)LEGAL STATUS

Bible reading and prayer in the public schools have long been sources of much legislative and judicial controversy. For over a century the state courts have been confronted with these issues, and in recent years cases involving Bible reading and/or prayer in the public schools have been subject to the deliberation of the United States Supreme Court.

The practice of establishing governmentally composed prayers for religious services was one of the factors influencing many of the early colonists to leave England and seek religious freedom in America. The Book of Common Prayer was created under governmental direction and approved by Acts of Parliament in 1548 and 1549. It prescribed in minute detail the accepted form and content of prayer, as well as the procedures for other religious ceremonies to be used in the established, tax-supported Church of England. The continuing controversies over the Book and its contents threatened to disrupt the peace of England, because the accepted forms of prayer changed as each new ruler succeeded to the throne. Powerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular beliefs upon the government.[1] These groups vied for the advancement of their beliefs by the governmentally established and supported religion, the Church of England. Groups

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[1]Sam Duker, The Public Schools and Religion: The Legal Context (New York: Harper & Row, 1966), p. 159.

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lacking the necessary influential power decided to leave England and seek religious freedom in America.

Some of the very groups which had most strenuously opposed the established Church of England found themselves in control of colonial governments in America. They wrote their own prayers into law and passed laws making their own religion the official religion of their respective colonies. Even to the time of the Revolutionary War, established churches existed in at least eight of the thirteen colonies. After the successful Revolution against English political domination, however, intense opposition arose to the practice of establishing religion by law. In 1785-1786, those opposed to the established church, led by James Madison and Thomas Jefferson, obtained the enactment of the famous "Virginia Bill for Religious Liberty" by which all religious groups were given equal status under state guidelines. Similar legislation was being passed in other states.

History shows that by the time of the adoption of the Constitution there was a widespread awareness among many Americans of the dangers of a union of church and state.[2] The Constitution was intended to avert part of this danger by leaving the government in the hands of the people rather than under the control of a monarch. The Founding Fathers felt that this safeguard was not sufficient--they were not willing to allow the form and content of their prayers to be influenced by the voters.[3]

The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ."[4]

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[2]Ibid., p. 160.

[3]Ibid., p. 161.

[4]U.S., Constitution, amend. I.

This Amendment was added to the Constitution to insure that the power of the federal government would not extend to control or influence the religious practices of the American people. It also guaranteed that the religions of the people would not be subjected to governmental pressures for change each time a different political administration entered office.[5] The Fourteenth Amendment, providing that "No state shall . . . deprive any person of life, liberty, or property, without due process of law,"[6] has been held by the Supreme Court to make the First Amendment applicable to the states. Because of the First and Fourteenth Amendments, government in America, be it state or federal, is without power to prescribe by law an establishment of religion or to prohibit the free exercise thereof.

Three cases played major roles in determining the constitutionality of Bible reading and recitation of prayer in public schools.

The first of these cases is Engel v. Vitale. The facts in this case are not complex--the New York Board of Regents composed a short prayer worded as follows:

> Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers, and our country.[7]

The board recommended that this prayer be recited regularly as part of the opening exercises in public school classrooms throughout the state of New York. Shortly after the practice of reciting the Regent's prayer was adopted by the school district of New Hyde Park, the parents of ten pupils brought action in a state court insisting that this official prayer

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[5]Sam Duker, The Public Schools and Religion: The Legal Context (New York: Harper & Row, 1966), p. 161.

[6]U.S., Constitution, amend. XIV, sec. 1.

[7]Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261 (1962).

in the public schools was contrary to their religious beliefs and those of their children.[8] They further contended that the regulation ordering the recitation of this prayer was a violation of the First and Fourteenth Amendments of the federal Constitution.[9]

The requirement by the school district of the recitation of the Regent's prayer was declared legal by the Court of Appeals of New York State, whereupon it was appealed to the United States Supreme Court. In a six to one decision the Supreme Court ruled that this practice was unconstitutional. Justice Black, writing for the majority, noted that there was no doubt that the daily classroom invocation was religious in nature;[10] thus its use in the public schools was totally inconsistent with the Establishment clause of the First Amendment of the Constitution, which states that no law "respecting an establishment of religion" shall be made.[11]

The Engel v. Vitale decision in July of 1962 created a great storm of criticism by theologians. Bishop James A. Pike of the Episcopal Church declared that the Supreme Court had "deconsecrated" the nation, and called for a constitutional amendment to reverse this "lockout of God."[12] Cardinal Spellman announced that he was "shocked and frightened" by the decision,[13] and evangelist Billy Graham referred to it as "another step toward the

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[8]Lee O. Garber and Newton Edwards, The Public School in Our Governmental Structure (Danville, Illinois: Interstate Publishers and Printers, 1970), p. 49.

[9]Ibid, p. 50.

[10]Edward C. Bolmeier, The School in the Legal Structure, 2nd ed. (Cincinnati: W. H. Anderson Co., 1973), p. 68.

[11]U.S., Constitution, amend. I.

[12]W. Katz, Religion and American Constitutions, cited by William R. Hazard, Education and the Law (New York: Free Press, 1971), p. 61.

[13]Ibid.

secularization of the United States" and observed that "the framers of our Constitution meant we were to have freedom of religion, not freedom from religion."[14]

During the October, 1962, term two cases involving questions quite similar to those proposed in Engel v. Vitale reached the Supreme Court.

The first of the cases, Schempp v. School District of Abington Township, was heard by a Federal District Court of Pennsylvania in 1959. At issue in this case was the validity of a Pennsylvania law requiring the reading of ten verses from the Holy Bible without comment at the beginning of each school day. The Schempp family brought suit to enjoin the school district from enforcement of this statute.[15] The lower court held that such reading constituted a religious activity; thus the statute violated the First and Fourteenth Amendments of the Constitution.[16]

The case reached the Supreme Court in October of 1960, but was remanded to the District Court in light of a recent amendment of the Pennsylvania statute requiring Bible reading. The amendment provided that pupils wishing to be excused would not be required to participate in the Bible reading practice. Upon the retrial of Schempp v. School District of Abington Township the plaintiff contended that despite the amendment, the law was still constitutionally objectionable.[17] The court agreed with Schempp because the choice of student participation did not alter the fact

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[14]Erwin Griswold, Absolute is in the Dark--A Discussion of the Approach of the Supreme Court to Constitutional Questions, cited by William R. Hazard, Education and the Law (New York: Free Press, 1971), p. 61.

[15]Sam Duker, The Public Schools and Religion: The Legal Context (New York: Harper & Row, 1966), p. 171.

[16]Ibid., p. 172.

[17]Ibid., p. 174.

that religious activities were being held in public schools under the auspices of local school authorities.

The case was again carried to the Supreme Court, which announced its decision on June 17, 1963. The Court declared the practice of the daily reading of ten verses of the Holy Bible in the public school unconstitutional.[18]

The case of Murray v. Curlett was decided by the Court of Appeals of the state of Maryland in April of 1962. In this case the complaint was filed by Mrs. Madalyn Murray and her son, both professed atheists, and was based on the alleged unconstitutionality of a 1905 Baltimore city school board ruling pertaining to opening exercises in public schools. In these exercises the Holy Bible was read and/or the Lord's Prayer was recited. This ruling was amended in 1960 to provide that a child could be excused from participation in or attendance during opening exercises upon request of a parent or guardian.[19] The Murrays declared that, nonetheless, the rule as amended was in violation of their rights to freedom of religion under the First and Fourteenth Amendments. The Court of Appeals ruled that the content and procedure of the exercises did not violate the constitutional rights of the plaintiffs.[20] Murray v. Curlett was appealed to the Supreme Court and for purposes of judicial efficiency was dealt with at the same time as the Schempp case.[21] The resulting decision of the Murray case was similar to that of Schempp--the prescribed

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[18]Ibid., p. 175.

[19]William R. Hazard, Education and the Law (New York: Free Press, 1971), p. 104.

[20]Ibid., p. 105.

[21]William K. Muir, Prayer in the Public Schools (Chicago: University of Chicago Press, 1967), p. 12.

exercises of Bible reading and recitation of the Lord's Prayer in the public school classroom were declared unconstitutional. The implications of these decisions, however, have not been interpreted to preclude the utilization of the Bible, objectively presented, in areas of academic study, e.g., history and literature.[22]

Once again the Supreme Court was flooded with criticism. An editorial in the Wall Street Journal declared that the Court had established atheism as "the one belief to which the State's power will extend its protection."[23] Cardinal McIntyre of Los Angeles stated that these decisions "can only mean that our American heritage of philosophy, of religion and of freedom are being abandoned in imitation of Soviet philosophy, of Soviet materialism and of Soviet regimented liberty."[24] Cardinal Cushing of Boston expressed the view that the Communists must be taking great pleasure in the rulings, and Cardinal Spellman of New York asserted that no one believing in God could approve of such holdings.[25]

Other religious leaders hailed the Schempp-Murray rulings as safeguards to the preservation of religious liberty. The Right Reverend Arthur Lichtenberger, Presiding Bishop of the Episcopal Church, declared that these decisions were in keeping with "the Court's sense of responsibility to assure freedom and equality to all groups of believers and non-believers as

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[22]Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[23]W. Katz, Religion and American Constitutions, cited by William R. Hazard, Education and the Law (New York: Free Press, 1971), p. 63.

[24]C. Rice, The Supreme Court and Public Prayer, cited by William R. Hazard, Education and the Law (New York: Free Press, 1971), p. 63.

[25]Ibid.

expressed in the First Amendment of the Constitution."[26]

The United States Supreme Court decisions of Engel v. Vitale, Schempp v. School District of Abington Township, and Murray v. Curlett did not end litigation regarding Bible reading and prayer in the public schools. However, these cases have largely determined the precedent and influenced the ruling of subsequent court cases dealing with the same or similar issues. Decisions holding prescribed activities of Bible reading and/or prayer in the public schools to be unconstitutional have been rendered in Delaware,[27] Florida,[28] Idaho,[29] Massachusetts,[30] New Hampshire,[31] New Jersey,[32] New

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[26]D. Boles, The Bible, Religion, and the Public Schools, cited by William R. Hazard, Education and the Law (New York: Free Press, 1971), p. 63.

[27]Johns v. Allen, 231 F. Supp. 852 (Del. 1964), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[28]Chamberlain v. Dade County Board of Public Instruction, 377 U.S. 402, 84 S. Ct. 1272 (Fla. 1964), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[29]Adams v. Engelking, 232 F. Supp. 666 (Ida. 1964), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[30]Attorney General v. School Committee of North Brookfield, 199 N.E. 2d 553 (Mass. 1964), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[31]Opinion of the Justices, 228 A.2d 161 (N.H. 1967), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[32]Sills v. Board of Education of Hawthorne, 200 A.2d 615 (N.J. 1963), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

York,[33] and Alabama.[34] Voluntary Bible reading and nondenominational mass prayers in the public schools were prohibited in Pennsylvania,[35] and in West Virginia[36] and New Jersey[37] the court disallowed the use of public school facilities to permit high school students to hold voluntary group prayer meetings. More recently, however, courts have appeared to uphold short periods of silent meditation when provided for by statutes.[38]

Clearly the recognized intent of the Founding Fathers was the separation of religious and governmental institutions. Even though violations of the First and Fourteenth Amendments concerning Bible reading and prayer in the public schools have been identified and proclaimed by state and federal courts, the proper relationship of religion and the public schools is a very complex social, economic, and political issue which is yet to be clearly defined.

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[33]Stein v. Oshinsky, 382 U.S. 957 (1966), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[34]Alabama Civil Liberties Union v. Wallace, 331 F. Supp. 966 (Ala. 1971), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[35]Mangold v. Albert Gallatin School District, 438 F. 2d 1194 (3rd Cir. 1971), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[36]Hunt v. Board of Education, 321 F. Supp. 1263 (W. Va. 1971), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation., 2nd ed. (New York: Harper & Row, 1978), p. 335.

[37]State Board of Education v. Board of Education, 401 U.S. 1013, 92 A.Ct. 1253 (N.J. 1971), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

[38]Gaines v. Anderson, 421 F. Supp. 337 (Mass. 1976), cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed. (New York: Harper & Row, 1978), p. 335.

BIBLIOGRAPHY

Adams v. Engelking, 232 F. Supp. 666 (Ida. 1964). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Alabama Civil Liberties Union v. Wallace, 331 F. Supp. 966 (Ala. 1971). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Attorney General v. School Committee of North Brookfield, 199 N.E. 2d 553 (Mass. 1964). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Boles, D. The Bible, Religion, and the Public Schools. Cited by William R. Hazard, Education and the Law, p. 63. New York: Free Press, 1971.

Bolmeier, Edward C. The School in the Legal Structure. 2nd ed. Cincinnati: W. H. Anderson Co., 1973.

Chamberlain v. Dade County Board of Public Instruction, 377 U.S. 402, 84 S.Ct. 1272 (Fla. 1964). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Duker, Sam. The Public Schools and Religion: The Legal Context. New York: Harper & Row, 1966.

Engle v. Vitale, 370 U.S. 421, 82 S.Ct. 1261 (1962).

Gaines v. Anderson, 421 F. Supp. 337 (Mass. 1976). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Garber, Lee O. and Edwards, Newton. The Public School in Our Governmental Structure. Danville, Illinois: Interstate Printers & Publishers, 1970.

Griswold, Erwin. Absolute is in the Dark--Discussion of the Approach of the Supreme Court to Constitutional Questions. Cited by William R. Hazard, Education and the Law, p. 63. New York: Free Press, 1971.

Hazard, William R. Education and the Law. New York: Free Press, 1971.

Hunt v. Board of Education, 321 F. Supp. 1263 (W. V. 1971). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Johns v. Allen, 231 F. Supp. 852 (Del. 1964). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Katz, W. Religion and American Constitutions. Cited by William R. Hazard, Education and the Law, p. 63. New York: Free Press, 1971.

Mangold v. Albert Gallatin School District, 438 F. 2d 1194 (3rd Cir. 1971). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Muir, William K. Prayer in the Public Schools. Chicago: University of Chicago Press, 1967.

Opinion of the Justices, 228 A.2d 161 (N.H. 1967). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Peterson, Leroy J.; Rossmiller, Richard A.; and Volz, Marlin M. The Law and Public School Operation, 2nd ed. New York: Harper & Row, 1978.

Rice, C. The Supreme Court and Public Prayer. Cited by William R. Hazard, Education and the Law, p. 63. New York: Free Press, 1971.

Sills v. Board of Education of Hawthorne, 200 A.2d 615 (N.J. 1963). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

State Board of Education v. Board of Education, 401 U.S. 1013, 91 S.Ct. 1253 (N.J. 1971). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335. New York: Harper & Row, 1978.

Stein v. Oshinsky, 382 U.S. 957 (1966). Cited by Leroy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation, 2nd ed., p. 335- New York: Harper & Row, 1978.

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